

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

CHERRY YOLANDA BELL,)
)
Plaintiff,)
)
v.) No. 4:23-CV-267-SRW
)
EMPLOYMENT CONNECTION,)
)
Defendant.)

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff Cherry Yolanda Bell's motion for leave to proceed *in forma pauperis* in these proceedings. Upon consideration of the motion and the financial information provided therein, the Court finds that Plaintiff is unable to pay the filing fee. The Court will therefore grant the motion. Additionally, the Court will require defendant Employment Connection to respond to the complaint, and will deny without prejudice Plaintiff's motion to appoint counsel.

Discussion

This Court is required to review a complaint filed *in forma pauperis*, and must dismiss it if it is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). An action is frivolous if it "lacks an arguable basis in either law or fact." *Neitzke v. Williams*, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief may be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Briefly, in the complaint at bar, Plaintiff alleges she suffered employment discrimination on the basis of her race and sex. She filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") and the Missouri Commission on Human

Rights. On February 10, 2023, the EEOC sent her a Determination and Notice of Rights, advising her that she had ninety days in which to file a lawsuit under federal law. Plaintiff filed this action on March 2, 2023. The Court finds that Plaintiff's complaint survives initial review, and will require defendant Employment Connection to respond.

Plaintiff has also filed a motion to appoint counsel. A *pro se* litigant has "neither a constitutional nor a statutory right to appointed counsel in civil cases." *Patterson v. Kelley*, 902 F.3d 845, 850 (8th Cir. 2018) (citing *Phillips v. Jasper Cty. Jail*, 437 F.3d 791, 794 (8th Cir. 2006)). A district court may appoint counsel in a civil case if it is "convinced that an indigent plaintiff has stated a non-frivolous claim . . . and where the nature of the litigation is such that plaintiff as well as the court will benefit from the assistance of counsel." *Id.* (citing *Johnson v. Williams*, 788 F.2d 1319, 1322 (8th Cir. 1986)). When determining whether to appoint counsel for an indigent litigant, a court considers relevant factors such as the factual complexity of the issues, the litigant's ability to investigate the facts and present her claims, the existence of conflicting testimony, and the complexity of the legal arguments. *Id.* (citing *Phillips*, 437 F.3d at 794).

In this case, there is no indication that Plaintiff is incapable of representing herself, and nothing in the instant motion or in the record before the Court indicates that the factual or legal issues are sufficiently complex to justify the appointment of counsel. Moreover, the Defendant has yet to be served with process and discovery has not begun, so there is no conflicting testimony. However, recognizing that circumstances may change, the Court will deny the motion for appointment of counsel without prejudice, and will entertain future such motions, if appropriate, as the case progresses.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's motion for leave to proceed *in forma pauperis* (ECF No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff's Motion to Appoint Counsel (ECF No. 3) is **DENIED** without prejudice.

IT IS FURTHER ORDERED that the Clerk shall issue process or cause process to issue upon the complaint as to defendant Employment Connection via its registered agent, Sal Martinez, at 2838 Market Street, St. Louis, Missouri, 63103.

Dated this 6th day of March, 2023.



STEPHEN R. WELBY
UNITED STATES MAGISTRATE JUDGE